

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for the  
Early Termination of Probation of:

**JIING TSONG WANG, M.D.**

Physician's and Surgeon's  
Certificate No. A 32418

Petitioner.

File No. 26-2008-194457

**DECISION**

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

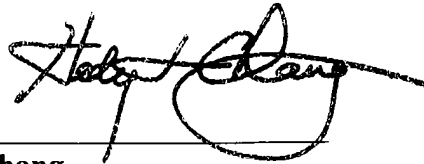
This Decision shall become effective at 5:00 p.m. on February 25, 2010.

IT IS SO ORDERED January 26, 2010.

MEDICAL BOARD OF CALIFORNIA

By: \_\_\_\_\_

**Hedy Chang**  
Chairperson, Panel B



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Case No. 26-2008-194457

OAH No. 2009100811

**PROPOSED DECISION**

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 24, 2009, in San Diego, California.

York Chang, Attorney at Law, represented petitioner Jiing Tsong Wang, M.D., who was present throughout the hearing.

Heidi Weisbaum, Deputy Attorney General, Office of the Attorney General, State of California, represented the Attorney General, State of California.

The matter was submitted on November 24, 2009.

**FACTUAL FINDINGS**

*Certificate History*

1. On June 12, 1978, the Medical Board of California (the Board), Department of Consumer Affairs, State of California, issued Physician's and Surgeon's Certificate No. A 32418 to Jiing Tsong Wang, M.D. (Dr. Wang). That certificate is renewed and is current, with an expiration date of May 31, 2010. That certificate is currently on probation, which will expire on July 10, 2011, unless terminated earlier.

### *Previous Discipline*

2. On December 20, 2005, the accusation in Case No. 02-2004-156892, was filed against Dr. Wang alleging that Dr. Wang had pled nolo contendere to violating Penal Code section 32 (being an accessory after the fact), a misdemeanor. The accusation and other required jurisdictional documents were served on Dr. Wang, who timely filed a notice of defense.

Dr. Wang entered into a Stipulated Settlement and Disciplinary Order which became effective on July 10, 2006, which revoked Dr. Wang's certificate, but stayed the revocation and placed him on probation for five years. Terms and conditions of probation included: Suspension from practice for 30 days (condition 1), successful completion of a medical record keeping course (condition 2), successful completion of an ethics course (condition 3), practice and billing monitoring (condition 4), a prohibition against supervising physician assistants (condition 6); the submission of quarterly declarations (condition 8); complying with probation unit directives (condition 9); submitting to interviews (condition 10); payment of probation monitoring costs (condition 16); and the condition that he obey all laws (condition 7).

### *Petition for Early Termination/Modification of Probation*

3. On September 29, 2008, the Medical Board received Dr. Wang's petition for termination of probation. By the time of the hearing on the petition in this matter, Dr. Wang was scheduled to serve approximately 20 additional months on probation.

### Dr. Wang's Narrative Statement

In his nine-page narrative statement, Dr. Wang represented that this had been the only discipline taken against his license in his 30 years of medical practice. Dr. Wang stated that he was hired in 2002 to be the medical director of a mobile diagnostic company and allowed his Medi-Cal number to be used for billing purposes. Dr. Wang was unaware that the mobile diagnostic company fraudulently billed Medi-Cal for services. During this time frame, Dr. Wang also hired a Physician's Assistant who submitted fraudulent claims to Family PACT programs without Dr. Wang's knowledge. Following a criminal investigation, Dr. Wang pled nolo contendere to a misdemeanor charge of being an accessory after the commission of a felony, a misdemeanor conviction.

In December 2006, Dr. Wang's criminal conviction was expunged. Dr. Wang has complied with all terms of his probation. Dr. Wang has taken courses and educated himself on his fiduciary responsibilities. He stated that he did not fully appreciate the risk of allowing others to use his Medi-Cal number, but has taken several education courses in order to understand his responsibilities. In his narrative, Dr. Wang discussed in detail the many things he has learned from the courses he has attended and the new insight they have provided. He stated there is "no likelihood of recurrence" of his past actions as he now realizes the "paramount importance of due diligence and reasonable care in the billing side of the practice of medicine."

### Letters of Reference

A letter signed by Frank Han, M.D., accompanied the petition. Dr. Han has known petitioner for 15 years. He described Dr. Wang as careful and ethical and stated that the biggest change since his conviction is Dr. Wang being "acutely aware" of his role in the community and his responsibility as a leader and medical professional. Dr. Han believed that Dr. Wang had "learned his lesson" and has discussed the ways in which he will be more "hands on" with the billing portion of his practice.

A letter signed by Kenneth Tye, M.D., accompanied the petition. Dr. Tye has known Dr. Wang since 1965 and is very familiar with his practice. As a result of the conviction, Dr. Wang has become "very detailed-oriented about his record-keeping and the supervision of his billing practices." Dr. Wang is "very serious about 'due diligence'" and is committed to preventing illegal activities in his practice. Dr. Wang is also much more careful about whom he hires and with whom he does business.

### *The Investigation Report*

4. Jerome Hull (Investigator Hull), a Medical Board senior investigator, prepared an investigative report related to the petition. The report summarized the proceedings and described Dr. Wang's background. Investigator Durham contacted the individuals who wrote letters on petitioner's behalf and confirmed that they had written the letters accompanying the petition. Many of them had never read the Board's decision, but none of them changed the opinions expressed in their letters after they were provided with a copy of the decision by Investigator Hull.

Investigator Hull spoke with Dr. Wang at the Tustin regional office on April 11, 2009. Dr. Wang stated that in 2002 he underwent heart surgery, was semi-retired, and attempted to sell his practice. In 2003, he was approached by two individuals who indicated that they represented a physician who wanted to purchase his practice. The physician also supervised a physician's assistant. The sale was never finalized but the physician's assistant asked Dr. Wang if he could purchase a percentage of the practice and work with Family PACT patients, a program Dr. Wang knew to provide family planning services. Dr. Wang agreed and allowed the physician's assistant to bill under Dr. Wang's Medi-Cal number. Dr. Wang then became employed as the medical director of a mobile diagnostic imaging company. He visited the site and was assured that the billings were legitimate. Dr. Wang sporadically reviewed patient charts but became suspicious and resigned as medical director.

Dr. Wang regretted that he failed to supervise his physician's assistant and accepted responsibility for this failure. Dr. Wang also acknowledged the difficulty of being a medical director of a mobile company located so far from his office. He appreciates the difficulty of monitoring files in that situation. Dr. Wang has a new-found appreciation for his role and responsibilities as a physician and now has a better understanding of ethics, boundaries and the obligation to obey the law. Dr. Wang will not hire a physician's assistant and will only treat patients personally. Dr. Wang is ashamed of his behavior and regrets it and assured Investigator Hull that it will never be repeated.

Dr. Wang's probation monitor reports indicated that he has fully complied with the terms and conditions of his probation.

*The Hearing on the Petition*

5. On November 24, 2009, the record was opened. Documentary evidence was introduced which established the matters set forth in Factual Findings 1-4, Dr. Wang provided sworn testimony, the recommendation of the Office of the Attorney General was received, the record was closed, and the matter was submitted.

6. Dr. Wang testified that he began practicing medicine in 1978. He has a general practitioner/family medicine practice wherein he is a solo practitioner. In 2002, he underwent heart valve replacement surgery and was looking to sell his practice. The intended purchaser of Dr. Wang's practice brought an office manager and physician's assistant to the practice, but the deal to sell Dr. Wang's practice fell through when the other physician's checks bounced. That physician left but the physician's assistant and office manager wanted to continue as employees, which they did with Dr. Wang. Dr. Wang allowed the physician's assistant to bill under Dr. Wang's Medi-Cal number and Dr. Wang reviewed the physician's assistant's chart. Dr. Wang testified that he was very impressed with the physician's assistant's care of patients and was shocked to discover he had committed fraud. According to Dr. Wang, the physician's assistant admitted in the criminal proceeding that Dr. Wang had no knowledge of the fraud taking place.

During this time, Dr. Wang was also approached to be the medical director of a mobile diagnostic company and allowed his Medi-Cal number to be used for billing purposes. Dr. Wang was unaware that any fraud was being committed, but admitted he was unable to properly oversee the company as it was physically located a distance from his office. Dr. Wang reviewed patient charts and at some point became suspicious of the billings and resigned as the medical director. Thereafter, a search warrant was executed as part of the criminal investigation and Dr. Wang learned the full extent of the fraud being committed. During this investigation, the physician's assistant admitted his fraud involving the Family PACT patients which shocked Dr. Wang.

Dr. Wang expressed sincere regret and shame for his behavior. He credibly explained that he had never supervised a physician's assistant before nor had he ever been a medical director. He credibly explained his naiveté in his role as a supervisor during this time. Dr. Wang credibly testified about the many courses he has taken since his conviction to fully educate himself on his role as a supervisor and as a biller of medical services. Dr. Wang's humility, sincerity and credible explanation of the circumstances which led to his conviction were heartfelt and persuasive. Dr. Wang humbly requested that his probation be terminated so that the shame and stigma of being a physician on probation could be removed. He credibly testified that the events and his actions which led to his discipline would never occur again. He has taken several steps to insure that his past behavior is never repeated.

## *The Attorney General's Recommendation*

7. The Attorney General's Office recommended that the petition for termination be granted.

## LEGAL CONCLUSIONS

### *Statutory Authority*

1. Government Code section 11522 provides in part:

"A person whose license has been revoked . . . may petition the agency for . . . reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor<sup>1</sup> . . . This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty."

2. Business and Professions Code section 2307 provides in part:

"(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

...

(2) At least two years for early termination of probation of three years or more.

...

(c) The petition shall state any facts as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

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<sup>1</sup> There are two purposes for the mandate: First, a statement of reasons enables a reviewing court to determine why the agency did what it did and, in that light, examine the administrative record to ascertain whether substantial evidence supports the decision; second, a statement of reasons advises the rejected petitioner what his deficiencies are and, therefore, tells him what he should do to make a subsequent petition meritorious. (*Crandell v. Fox* (1978) 86 Cal.App.3d 760, 765.)

(d) . . . The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division . . . which shall be acted upon in accordance with Section 2335.

(e) The . . . administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability . . ."

### *Regulatory Authority*

3. Title 16, California Code of Regulations, section 1359 provides:

"(a) A petition for . . . termination of probation . . . shall be filed on a form provided by the division.

(b) Consideration shall be given to a petition for . . . modification or termination of probation only when a formal request for such has been filed in the division's office in Sacramento at least thirty (30) days before a regular meeting of the division or appropriate medical quality review panel."

4. Title 16, California Code of Regulations, section 1360.2 provides:

"When considering a petition for reinstatement of a license . . . pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant."

*The Burden and Standard of Proof*

5. Petitioner has the burden of proof in this proceeding. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

*Relevant Factors in Determining Rehabilitation*

6. Rehabilitation is a state of mind. The law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.)

7. Cases authorizing reinstatement to a professional practice commonly involve a substantial period of exemplary conduct following the misdeeds. The more serious the misconduct, the stronger the showing of rehabilitation must be. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

*Cause Was Established to Terminate Probation*

8. The clear and convincing evidence established that it would not be contrary to the public interest to terminate Dr. Wang's probation.

This conclusion is based on all Factual Findings and all Legal Conclusions.

ORDER

The petition filed by Jiing Tsong Wang, M.D., for the early termination of probation imposed upon Physician's and Surgeon's Certificate No. A 32418 is granted.

DATED: 12/23/09

A handwritten signature in dark ink, appearing to read 'for' followed by a stylized signature.

MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings